

A close-up photograph of a person in a dark suit, light blue shirt, and striped tie. The person's hand is holding a white rectangular sign. The sign has the words "SECRETARIAL AUDIT" written in a bold, orange, serif font. The background is a plain, light color.

SECRETARIAL AUDIT





Secretarial Audit

Opportunity at Our Door-Step



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament



Recommendation by Parliamentary Standing Committee on Finance

Recommended in the **Companies Bill, 2009** in listed and bigger Companies:

- “Para 7.8: Secretarial Audit may also be mandated for BIGGER COMPANIES, including all listed companies;;
- Para 10.53: to ensure adherence to prescribed SECRETARIAL STANDARDS, the Committee recommend that Secretarial Audit report may be required to be attached with financial statements.

- **On the basis of suggestions of Committee, the MCA included Clause 178A**

Secretarial audit for bigger companies

- 1. PUC of Rs. 50 Crore or more**
- 2. Duty of the Company to give all assistance for auditing the secretarial and other records.**
- 3. The Board of Directors, in their Report, shall explain in full any qualification or observation or other remarks made by company secretary in practice in his report.**

Genesis of Secretarial Audit

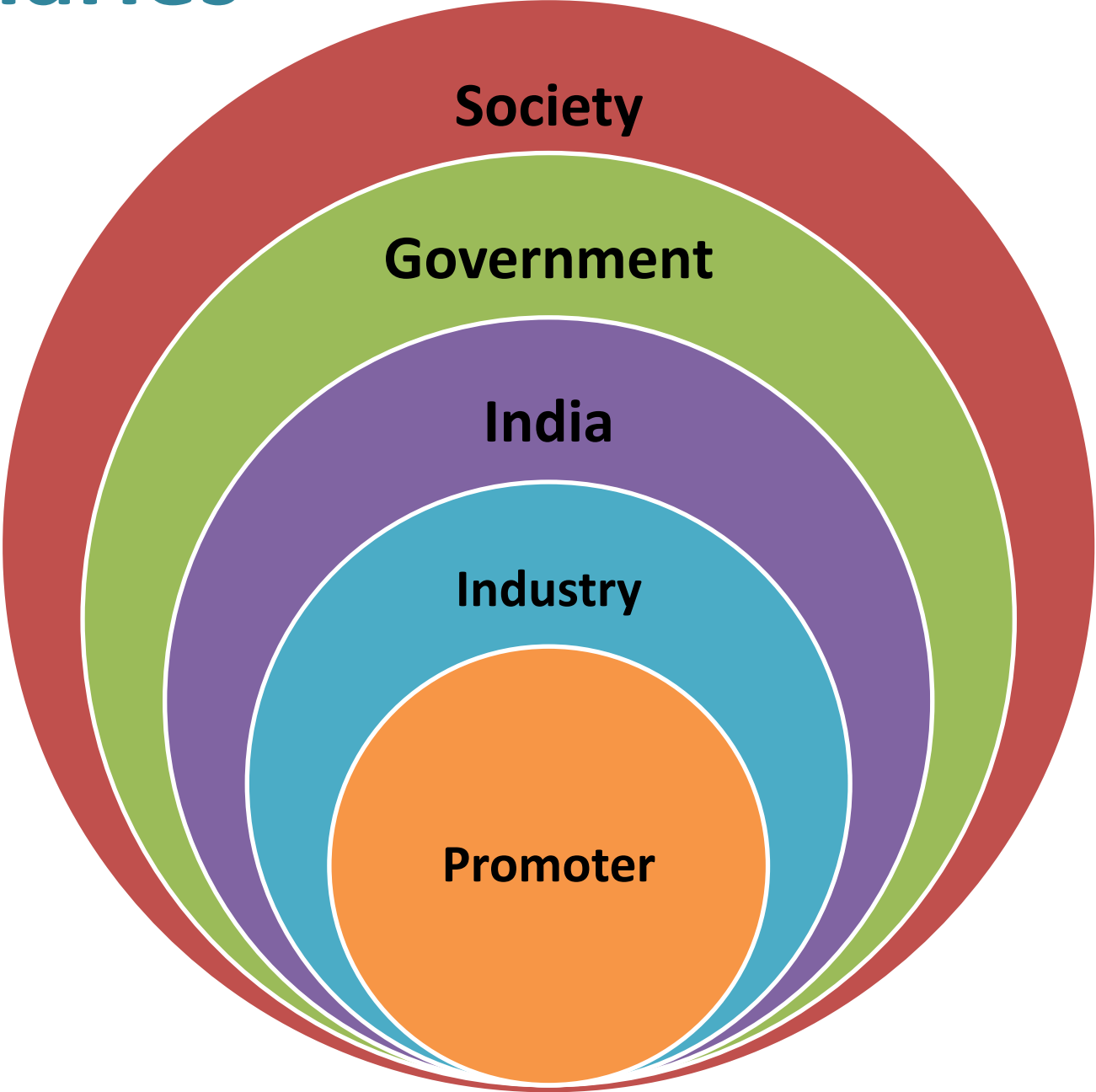
ABIDE BY ALL **APPLICABLE LAWS** AND THE INTERNAL REGULATORY FRAMEWORK.

GIVES NECESSARY COMFORT TO THE MANAGEMENT, **REGULATORS** AND THE STAKEHOLDERS

INDEPENDENT AND INTENDED TO IMPROVE **OPERATIONS** OF A COMPANY

SYSTEMATIC APPROACH TO IMPROVE CONTROL, AND **GOVERNANCE** PROCESSES

Beneficiaries

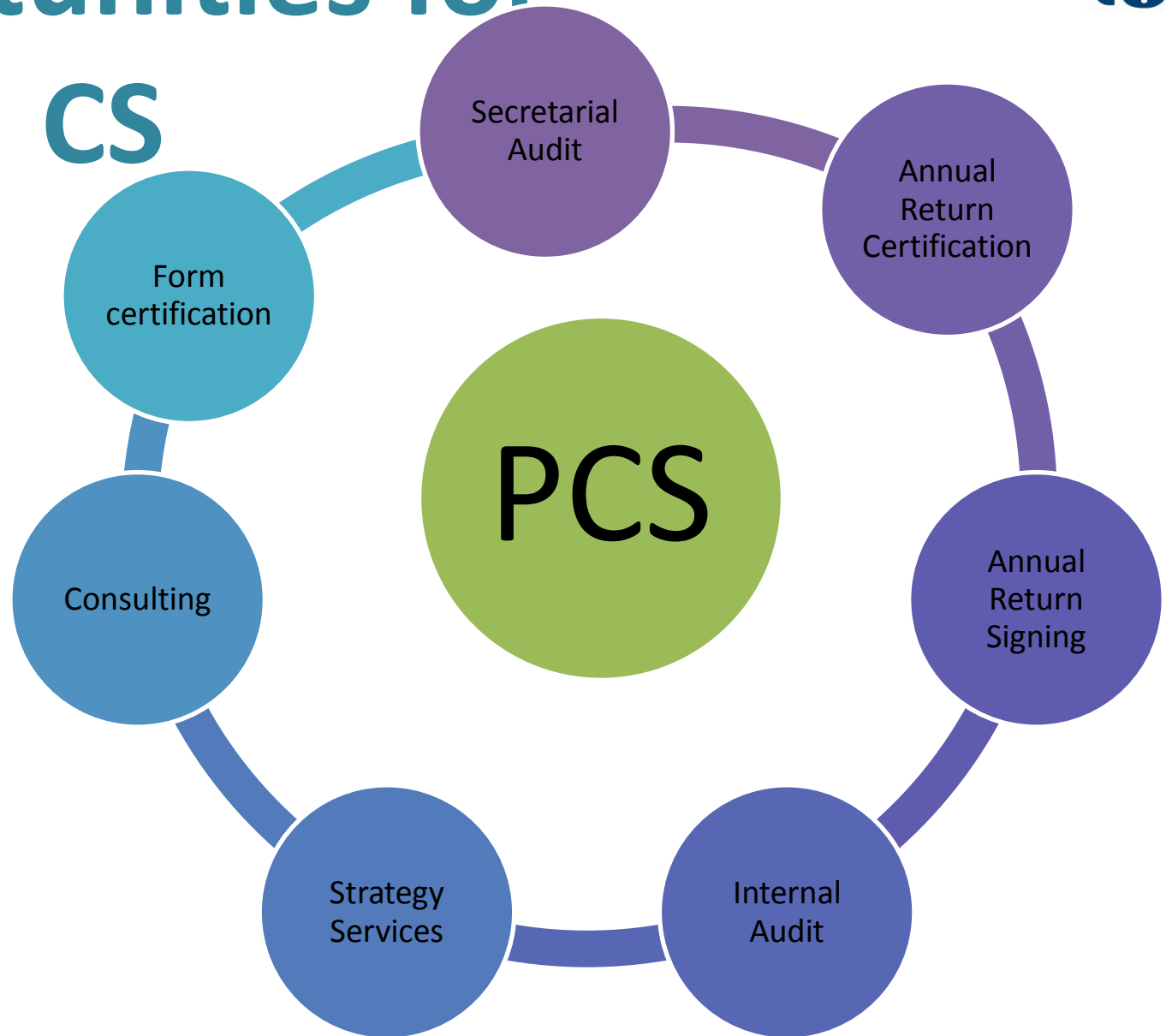




Purpose of Secretarial Audit

- **Compliance** of various legislations and regulations.
- Affairs of the Company are conducted in accordance with the requirements of Laws.
- Necessary Comfort – Management / Regulator / Stakeholders.
- Comfort - Non-executive/Independent Directors that appropriate mechanism and processes are in place.
- Reduces burden of the regulators in ensuring compliances.
- It help investors in taking informed investment decision.
- An effective due diligence exercise for the prospective investor or joint venture partners.

Opportunities for



Secretarial Audit- Applicability



Section 204(1) (Applicability)



EVERY LISTED COMPANY

**PUBLIC COMPANIES WITH PUC OF RS.50
CRORES OR MORE**

**PUBLIC COMPANIES WITH TURNOVER OF
RS.250 CRORES OR MORE**

- The point at which any of the criteria is crossed, SA is applicable
- Board to Appointment of PCS to conduct SA
- Submission of Form MGT-14 is mandatory
- Appointment terms & period can be decided by the Board - Act is silent

SECTION 204

204(2): COMPANY TO
GIVE **ASSISTANCE**

204(3): BOD'S SHALL
EXPLAIN ANY
QUALIFICATIONS IN THEIR
REPORT

204(4): If a Company or any officer of the Company or the CS in Practice, contravenes the provisions; the Company, every officer of the Company or the Company Secretary in Practice, who is in default, shall be **punishable with fine** which shall not be less than Rs.1 lakh but which may extend to Rs.5 lakhs.

Appointment of Secretarial Auditor



Appointment of Secretarial Auditor – By Board Resolution

Time of appointment – In the beginning of the yr.

Notice of AGM – Notice also to the Secretarial Auditor

Rights and duties of Secretarial Auditor under the CA 2013

**Assistance and facilities to the company secretary in practice
while conducting secretarial audit**

Cost to the Company

Who is Eligible to Conduct?

Practicing Company Secretary
holding a valid Certificate of Practice
issued by ICSI:

- as on the date of appointment (Co has to ensure eligibility of PCS)
- as on the date of signing of the report (PCS has to ensure)



Limits for audit by ICSI

- ICSI on 6th April, 2015 has issued guidelines for issuing secretarial audit report
- Effective from financial year 2015-16.
- For a firm of Company Secretaries, the ceiling in respect of Secretarial Audit would apply to each partner.

Limits for audit by ICSI

No. of years as member of ICSI as on 1 st April of each Financial Year	Number of Secretarial Audit Reports
Upto & equal to 5 years	5
More than 5 years but less than or equal to 10 years	10
More than 10 years	20

Powers & duties of Company Secretary



Powers

- Secretarial Auditor enjoys a wide gamut of powers by virtue of Section 204 (2) and Section 143 (14)
 - Right to access to secretarial records
 - Right of access to the books of account & vouchers
 - Seek information & explanation from Company and its officers
 - Power to enquire, inter alia, into the following matters:
 - Security for loans and advances and its terms
 - Transactions represented merely by book entries
 - Sale of assets of the company as consist of shares, debentures and other securities
 - Treatment of loans and advances made by the company
 - Treatment given to personal expenses;
 - Details of share allotted for cash

Duties of Secretarial Auditor

- Duty to report fraud [S. 143 (12 & 14)]
- Other duties emerging from the Reporting format :
 - Duty to scrutinize and verify the records
 - Duty to examine compliances of all applicable laws
 - Duty to verify & ensure systems & processes for compliances
 - Duty to report the non-compliances/ irregularities/ limitations
- Duty to **adhere to the highest professional standards** & justify the confidence reposed in the profession

Section 204 Vs 205

Secretarial Audit

Vs

FUNCTIONS OF A COMPANY SECRETARY

205(1): The functions of Company Secretary shall include-

- a. **To report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;**
- b. To ensure that the company complies with the applicable **SECRETARIAL STANDARDS;**
- c. To discharge such other duties as may be prescribed.



OTHER PRESCRIBED DUTIES OF
COMPANY SECRETARY

RULE 10 OF THE COMPANIES
(APPOINTMENT AND
REMUNERATION OF MANAGERIAL
PERSONNEL) RULES, 2014



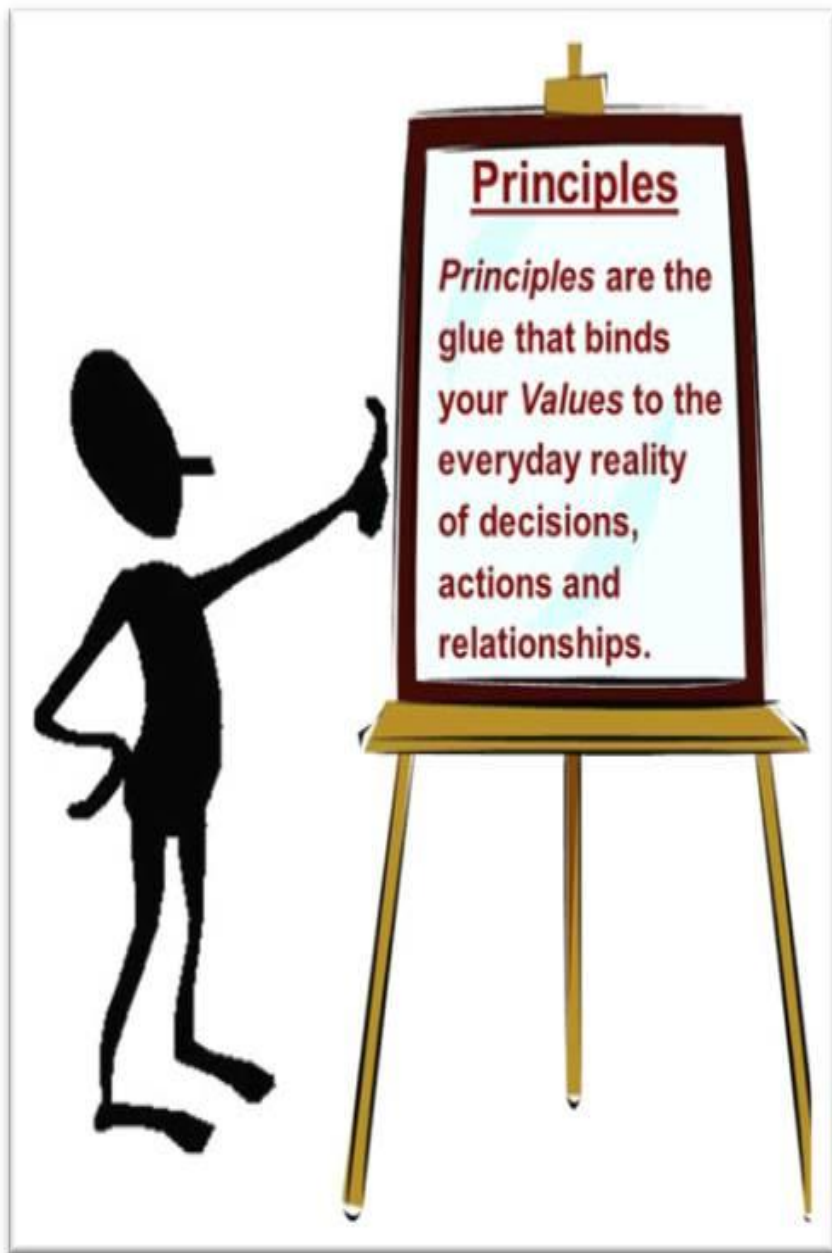
Clause 49 of Listing Agreement

“The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.”



APPROACH TO SECRETRIAL AUDIT

- *Knowledge* - Nature & Activities
- **Team**
- Documentation - manual & checklists
- **Keep proper record of documents checked.**
- **Third Party Support – MCA / SE / SEBI / RBI**
- **Timeline**
- Professional duty to provide an unbiased and objective view.
- **Company Secretary in Practice should be independent from the company being audited.**



GENERAL PRINCIPLES WHILE CONDUCTING SECRETARIAL AUDIT

- The following are general TECHNIQUES OF AUDITING
 - a) sample checking
 - b) test checking
 - c) random checking
 - d) trial and error checking
- The following GUIDING PRINCIPLES be adopted to reduce the extent of checking.
 - (i) adequate measures of internal control and checks built into the systems and procedures of the organization.
 - (ii) The principle of materiality is another important concept.
 - (iii) 'High risk' areas could be identified.

Secretarial Audit – The Process





Before accepting an assignment of Secretarial Auditor, the Auditor look into the following:

- Communication to earlier Incumbent .
- Acceptance of Appointment through appointment letter.
- Preliminary Discussions/Surveys to take an overview of the operations of the company.
- Preliminary Meeting with the senior management.
- Finalization of Audit Plan and Briefing the Audit Staff
- Working Papers relating to Audit.
- Obtain Management Representation Letter from the Company.
- Audit Summary for Discussions with the management for their views/clarifications/replies.
- Submission of Secretarial Audit Report



PREPARING FOR SECRETARIAL AUDIT

A company should prepare itself for secretarial audit by taking the following steps:

- **Compliance Program**
- **Team**
- **Maintenance of Records**
- **Preparation of Compliance Chart**
- **Conduct Compliance Awareness Programs**



SCOPE OF SECRETARIAL AUDIT

A. Reporting on compliance of 5 laws as mentioned in Form MR.3

- i. Companies Act, 2013
- ii. Securities Contracts (Regulation) Act, 1956 ('SCRA')
- iii. Depositories Act, 1996
- iv. Foreign Exchange Management Act, 1999
- v. Securities & Exchange Board of India Act, 1992
Take Over / Insider Trading / ICDR / ESOP / Listing of Debt/
Delisting / RTA / Buy Back



Contd.

- B. Reporting on compliance of '**Other laws as may be applicable specifically to the Company**' which shall include all the laws which are applicable to specific industry.

- C. Examining and reporting '**whether the adequate systems and processes are in place**' to monitor and ensure compliance with **general laws** like labour laws, competition law, environmental laws etc.

- D. In case of **financial laws** like tax laws etc., **Secretarial Auditor may rely on the Reports** given by statutory auditors or other designated professionals.



QUALIFICATIONS IN SECRETARIAL AUDIT REPORT



- A qualification, reservation or adverse remarks, if any, should be stated in **bold type** or in italics.
- If unable to express an opinion on any matter, he should mention that he is unable to express an opinion on that matter and the reasons thereof.
- **Further, the Board of Directors, in its Board's report, shall explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in the Secretarial Audit Report.**



RESPONSIBILITY

It's an overrated virtue. Passing blame is the circle of life.



PROFESSIONAL RESPONSIBILITY

Section 448 of Companies Act, 2013 - deals with penalty for false statements. The section provides that if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act or the rules made there-under, any person makes a statement,—

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material, he shall be liable under section 447 (Punishable for Fraud).



Form no. MR.3

**SECRETARIAL AUDIT REPORT
NEEDS TO BE ISSUED IN THIS
FORMAT ONLY**

SECRETARIAL AUDIT REPORT

FOR THE FINANCIAL YEAR ENDED

[Pursuant to section 204(1) of the Companies Act, 2013 and rule No.9 of the Companies (Appointment and Remuneration Personnel) Rules, 2014]

SECRETARIAL AUDIT REPORT

FOR THE FINANCIAL YEAR ENDED

To,
The Members,
..... Limited

I/We have conducted the secretarial audit of the compliance of applicable statutory provisions and the adherence to good corporate practices by..... (name of the company).(hereinafter called the company). Secretarial Audit was conducted in a manner that provided me/us a reasonable basis for evaluating the corporate conducts/statutory compliances and expressing my opinion thereon.

Based on my/our verification of the (name of the company's) books, papers, minute books, forms and returns filed and other records maintained by the company and also the information provided by the Company, its officers, agents and authorized representatives during the conduct of secretarial audit, I/We hereby report that in my/our opinion, the company has, during the audit period covering the financial year ended on

_____, _____ complied with the statutory provisions listed hereunder and also that the Company has proper Board-processes and compliance-mechanism in place to the extent, in the manner and subject to the reporting made hereinafter:

I/we have examined the books, papers, minute books, forms and returns filed and other records maintained by (“the Company”) for the financial year ended on __, _____ according to the provisions of:

- (i) The Companies Act, 2013 (the Act) and the rules made thereunder;
- (ii) The Securities Contracts (Regulation) Act, 1956 (‘SCRA’) and the rules made thereunder;
- (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
- (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;



(v) The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-

(a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

(b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;

(c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;

(e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;

(f) The Securities and Exchange Board of India (Registrars to an

Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;

(g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and

(h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;

(vi) (Mention the other laws as may be applicable specifically to the company)

I/we have also examined compliance with the applicable clauses of the following:

(i) Secretarial Standards issued by The Institute of Company Secretaries of India.

(ii) The Listing Agreements entered into by the Company with Stock Exchange(s), if applicable;

During the period under review the Company has complied with the provisions of the Act, Rules, Regulations, Guidelines, Standards, etc. mentioned above subject to the following observations:

Note: Please report specific non compliances / observations / audit qualification, reservation or adverse remarks in respect of the above para wise.

I/we further report that

The Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors and Independent Directors. The changes in the composition of the Board of Directors that took place during the period under review were carried out in compliance with the provisions of the Act.

Adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance, and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.

Majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.

I/we further report that there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

Note: Please report specific observations / qualification, reservation or adverse remarks in respect of the Board Structures/system and processes relating to the Audit period.

I/we further report that during the audit period the company has

(Give details of specific events / actions having a major bearing on the company's affairs in pursuance of the above referred laws, rules, regulations, guidelines, standards, etc. referred to above).

For example:

- (i) Public/Right/Preferential issue of shares / debentures/sweat equity, etc.
- (ii) Redemption / buy-back of securities
- (iii) Major decisions taken by the members in pursuance to section 180 of the Companies Act, 2013
- (iv) Merger / amalgamation / reconstruction, etc.
- (v) Foreign technical collaborations

Place :

Signature:

Date :

Name of Company Secretary in practice / Firm:

ACS/FCS No.

C P No.:

Note: Parawise details of the Audit finding, if necessary, may be placed as annexure to the report.

THE WAY FORWARD



building for the future



- MCA look forward to SA as comprehensive document to understand the compliance level.
- Audit Fees can be disclosed in Financial Statement
- Appointment/ removal/ vacancy to be in line with statutory auditor provisions
- Roll check provision to be made at MCA to control on numbers
- Development of Industry specific Guidance Notes for Auditing
- Capacity building & training sessions for the members.
- ICSI curriculum to be modified to develop other laws acumen among members.



Baccha Kabil Bano,
Kabil...

Kamyabi To Sali
Jhak Maar Ke
Peeche Bhagegi..

*Seek excellence & Success will
follow.....*

अगर नापनी है मेरे
हौसले की उडान को

काव्य संसार- The World of True Emotions

थोडा और ऊँचा हो जाये
कह दो नीले आसमान
को



Jai HIND



www.tnpsc.com



**Keep your head and your heart in
the right direction and you'll never
have to worry about your feet.**